

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 GEICO CASUALTY COMPANY,

4 Plaintiff

5 v.

6 PAUL SCHNEIDER; KIMBERLY
7 SCHNEIDER; and CASANDRA
8 SCHNEIDER,

 Defendants

Case No.: 2:17-cv-00961-APG-VCF

**Order Denying Motions for Summary
Judgment and Setting Hearing**

[ECF Nos. 25, 27]

9 At the hearing on May 30, 2018, I ordered the parties to submit supplemental affidavits
10 and briefs on the validity of the anti-stacking provision of GEICO's uninsured/underinsured
11 motorist (UIM) coverage. After considering the parties' briefs and GEICO's affidavit, I find a
12 question of fact remains as to whether GEICO has met the statutory requirements.

13 Under Nevada Revised Statutes § 687B.145(1), an anti-stacking provision will be void if
14 "the named insured has purchased separate coverage on the same risk and has paid a premium
15 calculated for full reimbursement under that coverage." The insurer has the burden to show that
16 a "different [UIM] premium amount was charged for each separate policy (thus showing that
17 each policy covered a separate and unique risk) or that the insured received a discount for the
18 anti-stacking provision." *Schneider v. State Farm Mut. Auto. Ins. Co.*, No. 2:14-cv-01932- JAD-
19 CWH, 2016 WL 4520907, at *2 (D. Nev. Aug. 29, 2016) (citations omitted).

20 GEICO's submits the affidavit of its Assistant Vice President of Pricing, Product and
21 Reserving Department, which states that in Nevada, UIM "coverage for a policy is calculated for
22 a single amount of coverage." ECF No. 43-1 at 3. This calculation starts with a base rate, which
23 "represents the starting dollar amount . . . used to calculate the premium for one covered

1 exposure[,] . . . defined as one insured vehicle for one year.” *Id.* Several factors are applied to
2 the base rate. Finally, as to the Schneider’s policy, “[a]fter accounting for the 6 vehicles on the
3 policy, a ‘Multi Vehicle Discount’ factor is applied.” *Id.* at 5. The affidavit states this discount
4 factor was .6935, but does not explain how it was calculated or whether it is a discount given for
5 the anti-stacking provision or something else, such as the business generated by multiple lines of
6 business. *See id.*; *see also Tenas v. Progressive Preferred Ins. Co.*, 238 P.3d 860, 2008 WL
7 6113368, at *3 (Nev. Sept. 16, 2008) (finding a genuine issue of material fact as to the validity of
8 an anti-stacking provision where the policy declarations page “provides a ‘multi-car
9 discount’ . . . [but did] not unambiguously state whether [the insured] had received a discount as
10 to anti-stacking”). Therefore, a genuine issue of material fact exists as to the validity of the UIM
11 anti-stacking provision, and granting either party’s motions for summary judgment on this issue
12 would be inappropriate.

13 GEICO has demanded, and has the right to, a jury trial. *See* ECF No. 1; *Kam-Ko Bio-*
14 *Pharm Trading Co., Ltd-Australasia v. Mayne Pharma (USA) Inc.*, 560 F.3d 935, 942 (9th Cir.
15 2009) (“[I]n a declaratory relief action, as in other civil actions, a party has an absolute right to a
16 jury trial unless a jury has been waived.” (emphasis omitted) (quotation omitted)). Given the
17 limited nature of the facts at issue, the parties should confer about whether they want a jury or a
18 bench trial. I will hold a hearing to discuss the scheduling and details of a trial on July 18, 2018.

19 IT IS THEREFORE ORDERED that the portion of GEICO’s motion for summary
20 judgment (**ECF No. 27**) addressing the UIM coverage is **DENIED**.

21 IT IS FURTHER ORDERED that the Schneiders’ motion for summary judgment (**ECF**
22 **No. 25**) is **DENIED**.

1 IT IS FURTHER ORDERED that the parties shall appear for a hearing on **July 18, 2018**
2 **at 1:30 p.m.** in Las Vegas courtroom 6C to discuss the scheduling and details of a trial.

3 DATED this 9th day of July, 2018.

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5 ANDREW P. GORDON
6 UNITED STATES DISTRICT JUDGE
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